IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OMPs No.350, 351 and 352 of 2004 in CS No.71 of 2001.
Date of decision: 04.08.2008.

Mohan Singh **….Non-Objector-Plaintiff**

Versus

Kamlender Singh & Others **… …Objectors-Defendants**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Plaintiff- Non-objector	:	**Mr.Sanjeev Kuthiala, Advocate.**
For Objectors-Defendants 1 to 3	:	**Ms.Aruna Sharma vice Ms.Jyotsna Rewal Dua, Advocate.**
For Defendant No.4	:	**Mr.Baldev Singh, Advocate.**

Dev Darshan Sud,J.

These three petitions have been moved by the defendants against the report of the Local Commissioner dated 27.4.2004, pursuant to the decree passed by this Court in a suit instituted by the plaintiff for partition of the joint property.

Vide judgment and decree dated 4th July, 2003, this Court disposed of the suit in the following terms:-

> *"This suit coming up for final hearing on 4th July, 2003, before a Single Bench consisting of Hon'ble Mr.Justice Arun*

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

> *Kumar Goel, Judge, High Court of Himachal Pradesh, Shimla, in the presence of Mr.Sanjeev Kuthiala, Advocate with Ms.Richa Sharma, Advocate, for the plaintiff; Ms.Jyotsna Rewal Dua, Advocate, for defendants No.1 to 3 and Mr.Baldev Singh, Advocate, for defendant No.4; it is ordered that for the reasons given in the judgment dated 4.7.2003, the suit for the plaintiff is decreed for partition by metes and bounds as per the shares of the parties to the suit in terms of the judgment. It is further ordered and decreed that partition suggested by the Local Commissioner will be the basis for such partition. Pages A and B with the report of Local Commissioner, together with pages 1 to 17, 19 to 21, 34 to 49 and 52 shall form part of this decree. Cost on the parties. "*

An appeal was preferred by the defendants being OSA No.9 of 2003, decided on 25th August, 2003, in which the judgment and decree dated 4.7.2003, was set aside and the matter was remanded for decision afresh after affording an opportunity to the parties to file their respective objections to the report of the Local Commissioner. It was ordered:

> *"A specific prayer was made on behalf of the defendants/appellants before the learned Single Judge on 4.7.2003 for time to prefer objections to the report of the Local Commissioner. Such request was however, turned down by the*

> *learned Single Judge. Keeping in view the facts and circumstances of the present case, we are of the opinion that an opportunity as prayed for by the defendants/appellants ought to have been granted to them for filing the objections to the report of the Local Commissioner.*
>
> *Resultantly, we allow this appeal and after setting aside the judgment and decree dated 4.7.2003 of the learned Single Judge remand the case for decision afresh after affording an opportunity to the parties to file objections to the report of the Local Commissioner. The objections if any, shall be filed by the parties within two weeks from today. It is stipulated that in the event of failure of the parties to prefer the objections to the report of the Local Commissioner within the abovesaid stipulated period of two weeks, it shall be presumed that no objections to the report of the Local Commissioner are to be preferred and in that event the learned Single Judge may proceed to dispose of the matter in accordance with law. No order as to costs."*

On 28.11.2003 a joint prayer was made by the parties that instead of adjudicating the objections, the original report along with copies of the objections filed by both sides should be remitted to the Local Commissioner with a direction to re-examine the matter and then send his fresh report, keeping in view and

taking note of the suggestions given in the objections of plaintiff as well as the defendants. The parties were thereafter directed to meet the Local Commissioner on 28.12.2003. The report was re-submitted by the Local Commissioner on 27.4.2004. The defendants objected to the report where-after the matter remained pending for some reasons. On 13.5.2005, this Court settled an issue, *as to whether report of the Local Commissioner dated 27.4.2004 is liable to be set aside/modified on the grounds pleaded in these three applications.* Evidence of the parties was recorded.

I have heard learned counsel appearing for the parties and have gone through the evidence on record.

The objections are a repetition of all that which has been said before. Before considering the objections, I had asked the learned counsel appearing for the parties to place on record the revenue record showing the manner in which the property had been partitioned amongst the parties. Learned counsel appearing for the plaintiff and defendants No.1 to 3 have placed on record the share allocation as reflected in Mark `X'. A perusal of this shows that the parties have been allotted/allocated land/building by way of a compact block to each of them in accordance with their wishes. Some minor deviations from their desired allocation do not constitute division of the property by metes and bounds in a manner which makes it difficult for the property to be partitioned. On going

through the evidence of the parties, I find that the Local Commissioner has, after considering kept the preferences of the parties to the maximum extent possible in mind and then proceeded to partition the land in a manner which was equitable and just to all the parties. The objections filed are nothing but a repetition of what has been said in the previous petition by the defendants and a way of lingering the dispute. It is not every objection of the parties which requires consideration but only those which point out or indicate that the distribution of the property by metes and bounds has been in an inequitable manner or in a way which destroys the very intrinsic value of the property. Merely because it is not possible to accede to the entire desired manner in which the partition proceedings should have been carried out according to the objectors, will not render the report unworkable. On going through the evidence of the parties and Mark `X' which is visual representation of the share of the parties as effected by the Local Commissioner, I do not find any inequity in the partition proceedings. These objections petitions are accordingly dismissed. Let a decree in terms of the report of the Local Commissioner dated 27.4.2004 be drawn up and the property disposed of by meets and bounds as directed. There shall be no order as to costs.

August 4, 2008. **Dev Darshan Sud)**
(aks) **Judge.**